IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7034 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order mad
JJJJ

#. The detention order dated 11-4-99 passed by respondent No.2 - The District Magistrate, Banaskantha against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu, a copy of which is produced at Annexure-B discloses the fact that the 6 criminal cases are registered against the petitioner. That 4 cases are registered at Deodar police station and one each is registered at Shihori and Bhiladi police station respectively. That all the cases are in respect of offences made punishable under Section 380, 457 and 114 of IPC. All the cases are pending for investigation. That the detaining authority having considered the material collected by the investigating officer, have come to the conclusion that the petitioner / detenu is dangerous person within of Section 2(C) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. In order to assail the impugned order, it has been contended at bar that last criminal case registered against the petitioner being C.R.No : 118 of 1998 has been registered at Deodar Police Station on 9-10-98. That thereafter, the grounds of detention does not disclose any prejudicial activities as alleged against the petitioner. However, the impugned order of detention is passed on 11-4-1999. That the said action having taken by unexplained delay, the order is invalid in law.

#. That in the matter of PRADEEP NILKANTH PATARKER VS STATE OF MAHARASHTRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court following the dicta of the earlier matter of T.A.ABDUL RAHEMAN VS STATE OF KERALA reported in 1989 (4) SCC 741 : AIR 90 SC 225 has held that inordinate delay between the alleged prejudicial activities and the impugned action of detention if not satisfactorily explained by the detaining authority, is fatal to the validity of the order.

That in the instant case, the impugned order as well as the grounds of detention does not disclose any explanation, as to why the action has been delayed till 11-4-1999 though alleged anti social activities were registered against the petitioner prior to 9-10-1998. It

is also noteworthy that the petitioner / detenu was arrested on 4-1-1999 and released on bail on 5-1-99. That thereafter, though the detaining authority has shown apprehension that the petitioner / detenu is likely to continue his anti social activities, the grounds of detention does not disclose any reasonable explanation, why no action for cancellation of his bail is taken against the petitioner / detenu. That shows that non application of mind vitiating the subjective satisfaction and rendering the impugned order invalid.

In absence of any affidavit in reply providing any explanation to the contentions raised in the petition, it is difficult to uphold the order for the reasons stated hereinabove.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11-4-1999 passed by respondent No. 2 - District Magistrate, Banaskantha against the petitioner is hereby quashed and set aside. The petitioner - Sonaji Galaji Thakore is ordered to be set at liberty forthwith, if not required in any other case.

It is stated at bar that pending final hearing of this petition, the detenu petitioner is transferred to the jail of Porbandar and thereby, writ of this order be sent to the Superintendent, Porbandar Special Jail. Rule to that extent is made absolute.

Date : 10-1-2000 [A.K.Trivedi, J.]

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